

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CAROL BING, Paternal Grandmother and
Next Friend to Minor Child S.D., Deceased,

PLAINTIFF,

vs.

MAHONING COUNTY CHILDREN
SERVICES BOARD, et al.,

DEFENDANTS.

CASE NO. 4:20-cv-2492

JUDGE SARA LIOI

MEMORANDUM OPINION

Before the Court is plaintiff's motion, pursuant to Fed. R. Civ. P. 41(a)(2), to dismiss this case without prejudice. (Doc. No. 7.) In her motion, plaintiff claims to "specifically reserve[] the right to re-file this suit within the one-year tolling provision of Fed. Civ. R. 41 [sic]." (*Id.* at 38.)

Defendants have indicated that they are not opposed to plaintiff's proposed voluntary dismissal without prejudice. Defendants do, however, object to plaintiff's "unilateral invocation of a one year tolling entitlement" and to inclusion of "any such language in a dismissal order." (Doc. No. 8 at 40.)

There is no tolling or savings provision in Fed. R. Civ. P. 41. Presumably, plaintiff is attempting to base her "right to re-file" in Ohio Rev. Code § 2305.19(A), which provides:

In any action that is commenced or attempted to be commenced, ... if the plaintiff fails otherwise than upon the merits, the plaintiff ... may commence a new action within one year after ... the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later.

Plaintiff, however, has brought her claims under federal, not state, law. State savings statutes are generally not applicable to federal claims that have their own statutes of limitation; but ordinary principles of equitable tolling may apply. *Spurlock v. Univ. of Toledo*, 86 F. Supp. 3d 744, 746 (N.D. Ohio 2015). Tolling decisions are made on a case-by-case basis. *Id.*

The Court will grant plaintiff's motion to voluntarily dismiss her lawsuit without prejudice. But the Court states no opinion as to whether plaintiff would be entitled to any kind of tolling for purposes of refiling her lawsuit. That is a question for another day and another court.

To the extent set forth herein, plaintiff's motion to dismiss without prejudice (Doc. No. 7) is granted.

IT IS SO ORDERED.

Dated: March 23, 2021



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE